

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ISMAEL VARGAS PRECIADO,

Plaintiff,

v.

CASE NO. 07-CV-12453
HONORABLE AVERN COHN

WAYNE CO. SHERIFF'S DEP'T. JAIL DIV.,

Defendant.

_____ /

ORDER DENYING MOTION FOR A CERTIFICATE OF APPEALABILITY AS MOOT

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff sued the Wayne County Sheriff's Department Jail Division alleging that he had not been given personal mail and that some of his legal mail was not delivered. He further alleged discrimination and a violation of his constitutional rights and said that he suffered mental anguish. He sought money damages. The Court dismissed the complaint without prejudice for failure to name a proper defendant. See Order of Summary Dismissal, filed July 24, 2007.

Before the Court is Plaintiff's motion for a certificate of appealability (COA). Plaintiff does not need a COA in order to pursue an appeal in a prisoner civil rights case. However, as explained in the Order of Summary Dismissal:

Plaintiff names the Wayne County Sheriff's Department Jail Division as the sole defendant in this action. Section 1983 imposes liability on any "person" who violates an individual's federal constitutional or statutory rights. It is well-settled

under Michigan law that county jails, sheriff departments, and other governmental agencies are not legal entities amenable to suit under § 1983.

. . .

Accordingly, the complaint is **DISMISSED WITHOUT PREJUDICE** to the filing of a new complaint naming a proper defendant such as the Wayne County Sheriff and/or jail employees who allegedly mishandled his mail. The Court makes no determination about the merits of any such complaint.

The Court also certified that any appeal would be frivolous and not taken in good faith.

Under these circumstances, Plaintiff's best recourse is to file a new complaint naming the proper defendant(s).

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: August 14, 2007

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record and Ismael Preciado, 072872, Wayne County Jail, 570 Clinton Street Detroit, MI 48226 on this date, August 14, 2007, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160